



COPY OF PAPERS  
ORIGINALLY FILED

Attorney Docket No.: 13816-003001

#3

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant : Thomas E. Hamilton et al.      Art Unit : 2162  
Serial No. : 10/066,156      Examiner :  
Filed : February 1, 2002  
Title : TRANSACTION BASED PACKET SWITCHED DATA SERVICES ON A  
WIRELESS NETWORK

Commissioner for Patents  
Washington, D.C. 20231

RECEIVED

MAY 14 2002

PETITION ON BEHALF OF JOINT INVENTOR UNDER 37 C.F.R. 1.47(a) TO  
PROCEED UPON REFUSAL OF OTHER JOINT INVENTOR

This petition under 37 C.F.R. 1.47(a) is made on behalf of the joint inventor, Thomas E. Hamilton, who seeks to make this application on behalf of himself and his joint inventor, Simon Cavenett, who has failed to join in this application for patent. The joint inventor, Thomas E. Hamilton, has informed me that Simon Cavenett no longer works for Avian Communications. The last known address for Mr. Cavenett is as follows:

Simon Cavenett  
1060 Knoll Terrace  
Roswell, GA 30075

Submitted in support of this petition are the following documents:

1. A Combined Declaration and Power of Attorney signed by Thomas E. Hamilton;
2. A check in the amount of \$65.00 in payment of the fee required under 37 C.F.R. 1.17(h) for this petition; and
3. A declaration under 37 C.F.R. 1.47(a) documenting refusal by the joint inventor, Simon Cavenett, the declaration being made by Karen B. Lacerda, a person knowledgeable with the effort to actual facts.

CERTIFICATE OF MAILING BY FIRST CLASS MAIL

I hereby certify under 37 CFR §1.8(a) that this correspondence is being deposited with the United States Postal Service as first class mail with sufficient postage on the date indicated below and is addressed to the Commissioner for Patents, Washington, D.C. 20231.

April 26, 2002  
Date of Deposit

Karen B. Lacerda  
Signature

Karen Lacerda  
Typed or Printed Name of Person Signing Certificate

05/10/2002 6TEFFER 00000027 061050 10066156  
01 FC:122 130.00 CH

Applicant : Thomas E. Ha [redacted] al.  
Serial No. : 10/066,156  
Filed : February 1, 2002  
Page : 2

Attorney's Docket No.: 13816-003001

Please apply any additional charges, or make any credits to Deposit Account No. 06-1050.

Please contact the undersigned if additional information is required in connection with consideration of this Petition.

Respectfully submitted,

Date:

April 26, 2002

Kenneth F. Kozik

Kenneth F. Kozik  
Reg. No. 36,572

Fish & Richardson P.C.  
225 Franklin Street  
Boston, Massachusetts 02110-2804  
Telephone: (617) 542-5070  
Facsimile: (617) 542-8906

# FISH & RICHARDSON P.C.

Exhibit A

Frederick P. Fish  
1855-1930

W.K. Richardson  
1859-1951

225 Franklin Street  
Boston, Massachusetts  
02110-2804

Telephone  
617 542-5070

Facsimile  
617 542-8906

Web Site  
[www.fr.com](http://www.fr.com)

February 15, 2002

Simon Cavenett  
1060 Knoll Terrace  
Roswell, GA 30075



BOSTON

DALLAS

DELAWARE

NEW YORK

SAN DIEGO

SILICON VALLEY

TWIN CITIES

WASHINGTON, DC

Re: PACKET SWITCHED DATA SERVICE ON A WIRELESS NETWORK

Applicant: Thomas E. Hamilton et al.

Application No.:

Filing Date:

Country: United States

Our Ref.: 13816-003001

Dear Simon:

We are pleased to inform you that on, we filed a patent application on the above-identified invention with the U.S. Patent Office (copy enclosed). You may now use the phrase "patent pending" in advertising and on the invention.

We expect official confirmation of the filing within 2-4 weeks. Shortly thereafter, you will receive a letter from our office asking you whether you wish to investigate the cost of filing foreign patent applications. However, a decision as to foreign filing need not be made for approximately 6 to 9 months from the U.S. filing date (foreign applications must be filed by 12 months after the U.S. filing date).

The first substantive Office Action from the Patent Office will probably not be received for approximately 9-12 months from the U.S. filing date. We will keep you informed of the prosecution of this matter.

Prior Art

Any prior art or other information which you believe may need to be disclosed to the Patent Office should be brought to our attention as soon as possible. We will use such information to prepare an "Information Disclosure Statement" (IDS) as required by the Patent Office. Information must be disclosed if it is "material." Information is considered "material" if it is not cumulative to information already disclosed to the Patent Office and: (1) the information shows all features recited in a claim; or (2) the information either alone or together with other known information, shows or suggests to one of ordinary skill in the pertinent art all the features of a claim; or (3) the

Simon Cavenett  
February 15, 2002  
Page 2

information refutes, or is inconsistent with, a position taken either in opposing an argument advanced by the Patent Office in rejecting the claims, or in asserting that a claim is patentable.

Under the Patent Office rules, IDS must be filed within 3 months after the filing date to avoid possible penalty. If the IDS is filed more than 3 months after the application filing date and after the first Office Action on the merits has been mailed by the Patent Office, the applicant must either:

- (1) pay a fee of \$180 or
- (2) submit a Certification that:
  - (A) each item of the IDS was first cited in a counterpart foreign application no more than 3 months before the filing of the IDS, or
  - (B) no item of the IDS was cited in a counterpart foreign application or was known to any person having a duty of disclosure (i.e., the inventors and all individuals substantively involved in the preparation or prosecution of the application) more than 3 months before the filing of the IDS.

After a final Office Action or after a Notice of Allowance has been mailed but before the Issue Fee is paid, an IDS will be accepted by the Patent Office only if it is accompanied by a Certification as described above, along with a Petition and a fee of \$180. If the Certification cannot be made (i.e., the references were cited or known more than 3 months before), or if the Issue Fee has been paid, the Patent Office will permit the application to be abandoned in favor of a continuing application in which the information will be considered.

If you have any questions regarding this matter, please feel free to contact me.

Very truly yours,

  
Kenneth F. Kozik

KFK/kbl

# FISH RICHARDSON P.C.

*E Hubert B*

Frederick P. Fish  
1855-1930

W.K. Richardson  
1859-1951

225 Franklin Street  
Boston, Massachusetts  
02110-2804

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February 15, 2002

Simon Cavenett  
1060 Knoll Terrace  
Roswell, GA 30075

Re: PACKET SWITCHED DATA SERVICE ON A WIRELESS NETWORK

Applicant: Thomas E. Hamilton et al.

Application No.:

Filing Date:

Country: United States

Our Ref.: 13816-003001



BOSTON

DALLAS

DELAWARE

NEW YORK

SAN DIEGO

SILICON VALLEY

TWIN CITIES

WASHINGTON, DC

Dear Simon:

Enclosed please find a Combined Declaration and Power of Attorney that we will need to have you resign. Unfortunately after the application was filed, we noticed an error in the title of the application on the Declaration and Assignment. Once the executed documents are received, we will promptly file them with the U.S. Patent and Trademark Office. I've enclosed a self-address, stamped envelope for your convenience.

Thank you for your attention to this matter. Please feel free to contact me if you have any questions.

Very truly yours,

*Kenneth F. Kozik*

Kenneth F. Kozik

KFK/kbl

20391048.doc

FISCH & RICHARDSON P.C.

*Exhibit C*

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Boston, Massachusetts  
02110-2804

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Frederick P. Fish  
1855-1930

W.K. Richardson  
1859-1951

VIA CERTIFIED MAIL, 2<sup>ND</sup> REQUEST

April 4, 2002

Simon Cavenett  
1060 Knoll Terrace  
Roswell, GA 30075

Re: TRANSACTION BASED PACKET SWITCHED DATA SERVICES ON A  
WIRELESS NETWORK

Applicant: Thomas E. Hamilton et al.  
Application No.: 10/066,156  
Filing Date: February 1, 2002  
Country: United States  
Our Ref.: 13816-003001



BOSTON  
DALLAS

DELAWARE

NEW YORK

SAN DIEGO

SILICON VALLEY

TWIN CITIES

WASHINGTON, DC

Dear Simon:

Enclosed please find a copy of the Filing Receipt and Notice to File Missing Parts relative to the above-mentioned application. Please note that the application number is 10/066,156. We have yet to receive your copy of the signed Combined Declaration and Power of Attorney and Assignment which we previously sent to you on February 12, 2002.

Please be advised that the signed version of the Combined Declaration and Power of Attorney is due on **April 28, 2002**, and can be extended for a period of up to 5 months upon payment of extension fees. These fees are rather significant and we strongly recommend that these signed papers be sent to us promptly. I am enclosing a self-addressed stamped envelope for their return to us.



Thank you for your attention to this matter. Please feel free to contact me if you have any questions.

Very truly yours,


Kenneth F. Kozik


KFK/kbl

Enclosures: Copy of Application, Copy of Filing Receipt and Notice to File Missing Parts, Combined Declaration and Power of Attorney, Assignment, and self-address stamped envelope

SENDER: COMPLETE THIS SECTION		COMPLETE THIS SECTION ON DELIVERY	
<ul style="list-style-type: none"> <li>■ Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.</li> <li>■ Print your name and address on the reverse so that we can return the card to you.</li> <li>■ Attach this card to the back of the mailpiece, or on the front if space permits.</li> </ul>		A. Signature X  <input type="checkbox"/> Agent <input checked="" type="checkbox"/> Addressee	
1. Article Addressed to:  Simon Cavenett 1060 Knoll Terrace Roswell, GA 30075		B. Received by (Printed Name)  C. Date of Delivery 4/9/02	
2. Article Number (Transfer from Service label)		D. Is delivery address different from item 1? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No If YES, enter delivery address below:	
3. Service Type <input checked="" type="checkbox"/> Certified Mail <input type="checkbox"/> Express Mail <input type="checkbox"/> Registered <input type="checkbox"/> Return Receipt for Merchandise <input type="checkbox"/> Insured Mail <input type="checkbox"/> C.O.D.		4. Restricted Delivery? (Extra Fee) <input type="checkbox"/> Yes	
PS Form 3811, August 2001		Domestic Return Receipt 102595-01-M-2509	

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Kenneth F. Kozik  
Fish & Richardson P.C.  
225 Franklin St.  
Boston, MA 02110

13816-003001

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**U.S. Postal Service  
CERTIFIED MAIL RECEIPT**

*(Domestic Mail Only; No Insurance Coverage Provided)*

**OFFICIAL USE**

7001 0320 0000 2645 5793

Postage  
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\$ 1.95  
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1.50  
\$ 5.55

PORT POINT STA BOSTON MA 02101  
APR 24 2002  
Here

kfk 13816-003001

Sent To  
Simon Cavenett  
Street, Apt. No., or PO Box No. 1060 Knoll Terrace  
City, State, ZIP+4 Roswell, GA 30075



**Mondo Techo, LLC**

*Exhibit D*

1060 Knoll Terrace  
Suite 100  
Roswell, GA 30075

Tel 404-822-0899  
Fax 508-632-2576

April 12, 2002

Kenneth Kozik  
Fish & Richardson P.C.  
225 Franklin Street  
Boston, MA 02110-2804

Dear Kenneth:

I have received your correspondence with documentation relating to Patent Applications titled, "Packet Switched Data Service on a Wireless Network" and "Transaction Based Packet Switched Data Services on a Wireless Network".

I appreciate the opportunity to contribute to the completion of these patent application filings and have accordingly enclosed a quotation to undertake the requested work.

Please note that, if the quotation is acceptable, a cashier's check is due in advance of any work performed. Upon receipt of full payment, it is estimated that all work will be completed and the necessary documentation will be express couriered (overnight priority) back to you within 5 business days.

Sincerely,



Simon Cavenett  
Principal

Enclosure: Quotation FR01/100

# Mondo Techo, LLC

## Technology Consulting

1060 Knoll Terrace, Suite 100  
Roswell, GA 30075  
Phone 404-822-0899 Fax 508-632-2576

**Bill To:**  
Kenneth Kozik  
Fish and Richardson P.C.  
225 Franklin Street  
Boston, MA 02110-2804  
Tel 617-542-5070

# Quotation

**DATE** 14/12/2002  
**Quotation #** 100  
**Customer ID** FR01

*Quotation valid until:* 4/30/2002  
*Prepared by:* SWC  
*Payment Terms:* Cashier's check.

**Comments or Special Instructions:** Cashier's check to be received prior to commencement of work.  
Work completion within estimated 5 business days upon full payment.

Description	AMOUNT
Review, sign, return Patent Application documentation, re "Packet Switched Data Service on a Wireless Network"	20,000.00
Review, sign, return Patent Application documentation, re "Transaction Based Packet Switched Data Services on a Wireless Network"	20,000.00
<i>Costs inclusive of labor, notary public witnessing fees, courier and handling charges.</i>	
<b>TOTAL</b>	<b>\$ 40,000.00</b>

If you have any questions concerning this quotation contact:  
Simon Cavenett, Tel 404-822-0899, Email [simon@mondotecho.com](mailto:simon@mondotecho.com)

**THANK YOU FOR YOUR BUSINESS!**

Exhibit F

**EMPLOYEE AGREEMENT WITH RESPECT TO  
NON-COMPETITION, PROPRIETARY INFORMATION, INVENTIONS  
AND OTHER INTELLECTUAL PROPERTY**

In consideration of and as part of the terms of employment of SIMON W. CAVENETT ("Employee") by Avian Networks, Inc. ("Avian") and of the mutual covenants set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto hereby agree as follows:

1. The following definitions are applicable to this Agreement:
  - a. "Avian" means not only Avian Networks, Inc. but also any other entity of any nature now or hereinafter owned or controlled by Avian Networks, Inc. or which owns or controls Avian Networks, Inc.
  - b. "Employee" means not only the individual executing this Agreement on his or her own behalf but also his or her heirs, successors, legal representatives and assigns.
  - c. "Subject Invention" means any invention, improvement or discovery, whether or not patentable, which arises out of or is related to any existing or future business interest of Avian and which, during the period of said employment, is conceived solely by Employee or by Employee jointly with others or first reduced to practice by or for Avian.
  - d. "Avian Proprietary Information" means all information of any nature, whether or not marked with a proprietary or similar legend, which concerns Avian's design, manufacture, use, purchase, marketing or sale of its products or services.
  - e. "Subject Copyright" means any original work of Employee, whether or not capable of being copyrighted, which arises out of or is related to any existing or future business interest of Avian and which, during the period of said employment, is fixed in any tangible medium of expression from which such work can be perceived, produced or otherwise communicated, either directly or with the aid of any device.
  - f. "Avian Intellectual Property" means Subject Invention, Avian Proprietary Information and Subject Copyright, either singly or in any combination thereof.

2. All Avian Intellectual Property is and shall remain the sole and exclusive property of Avian. Employee shall make no use or disclosure of any Avian Intellectual Property, except as directed by Avian. Employee shall disclose completely and immediately to Avian any Avian Intellectual Property generated by Employee. In addition, Employee shall execute all documents requested by Avian in connection with confirming in Avian the entire right, title and interest in and to any Avian Intellectual Property, including, without limitation, documents in connection with patent and copyright applications, and will furnish to Avian all necessary assistance for Avian to protect its rights in any Avian Intellectual Property.

3. All tangible evidence of Avian Intellectual Property which at any time comes into the possession of Employee, including, without limitation, documents, records, software, models or prototypes, shall remain the sole and exclusive property of Avian and will be provided to Avian upon Avian's request at any time and, in any event, upon the termination of said employment.

4. Employee shall not, at any time, either during or after the period of said employment, disclose to any person or entity or make any use of any Avian Proprietary Information or any proprietary information belonging to third parties whose protection has been entrusted to Avian, except as directed by Avian.

5. In consequence of the entrusting to Employee by Avian of Avian Intellectual Property, and in recognition of the fact that Avian does business throughout the world with a variety of different persons and entities, Employee shall not, directly or indirectly and in any capacity whatsoever, whether as an owner, employee, director, officer, trustee, beneficiary, consultant, independent contractor or otherwise, for a period

of two (2) years after the termination of Employee's employment with Avian for any reason whatsoever, render services to or for any person or entity anywhere in the world which is engaged in any manner whatsoever in a business which is competitive with that of Avian.

6. Employee acknowledges that any breach or threatened breach of this Agreement or any provision hereof will cause irreparable injury to Avian for which an adequate monetary remedy does not exist. Accordingly, in the event of any such breach or threatened breach, Avian shall be entitled, in addition to the exercise of any and all available remedies, to obtain injunctive relief, without the necessity of posting a bond or other surety, restraining Employee from committing such breach or threatened breach, and Employee hereby consents to the entry of such injunctive relief, without the necessity of any bond or other surety.

7. The obligations of the parties under Paragraphs 2, 3, 4, 5 and 6 hereof shall not expire upon the termination of said employment but shall remain in full force and effect at all times thereafter in accordance with their respective terms.

8. Neither the execution and delivery, nor the continuance, of this Agreement shall be deemed to be an employment agreement between Employee and Avian, and nothing contained herein shall be deemed to give Employee the right to be retained in the employ of Avian or to interfere with the right of either party voluntarily to terminate Employee's employment with Avian at any time for any reason.

9. This Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Massachusetts.

10. In the event any provision of this Agreement shall be held to be void or unenforceable in whole or in part, such determination shall not affect the remainder of this Agreement, which shall remain in full force and effect, and such void or unenforceable provision shall be enforced to the maximum extent legally permissible.

11. This Agreement constitutes the entire agreement between the parties concerning its subject matter and supersedes any prior or contemporaneous agreements and understandings in connection therewith. This Agreement may be amended, waived or revoked only by a written instrument executed by both parties.

EXECUTED as an instrument under seal at Marlboro, Massachusetts  
this 22<sup>nd</sup> day of JANUARY, ~~2000~~ 2001

AVIAN NETWORKS, INC.

EMPLOYEE:

By: Peggy Hill  
Title: Business Manager

[Signature]